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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,432	07/30/2001	Rita Koester	H-3540-PCT/U	4209

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COGNIS CORPORATION  
PATENT DEPARTMENT  
300 BROOKSIDE AVENUE  
AMBLER, PA 19002

EXAMINER
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OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/831,432

Applicant(s)

KOESTER ET AL.

Examiner

Necholus Ogden

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. Claim 14 rejected under 35 U.S.C. 102(b) as being anticipated by Feighner et al (3,539,518) is withdrawn in view of applicant's amendment.
2. Claims 14-36 rejected under 35 U.S.C. 103(a) as being unpatentable over EP (0217732) is withdrawn.

***Response to Arguments***

3. Applicant's arguments with respect to claims 14-36 have been considered but are moot in view of the new ground(s) of rejection.
4. Claims 14-17, 25-28, 31, 33-35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 05-202382.

JP '382 disclose a detergent composition useful for dish washers comprising 1-10% by weight of a nonionic surfactant of formula I which is an alkoxyated carboxylic ester; 1-40% by weight of builder such as citrates, polycarboxylic acid copolymers (see abstract).

As this reference teaches all of the instantly required it is considered anticipatory.

5. Claims 18-19, 24, 29-30 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Haerer et al (5,602,093).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of an additional nonionic surfactant such as alkyl polyglucoside and alkyl polyglycol ethers.

Haerer et al '093 disclose a rinse aid for dishwashing machines comprising alkyl polyglycoside and alkyl polyglycol ethers (see abstract and col. 2, lines 24-34).

It would have been obvious to one of ordinary skill in the dishwashing art to include the alkyl polyglycoside and/or alkyl polyglycol ether surfactants of Haerer et al '093 because both prior art references teach the use of surfactants for automatic dishwashing and Haerer et al '093 teach that the aforementioned surfactants ecologically and toxicologically satisfactory and are equivalent in performance properties to commercial rinse aids and do not have any disadvantages (col. 2, lines 15-20). Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

6. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Lewis (5,612,305).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of applicant's specific alkyl polyglycol ether.

Lewis discloses a mixed surfactant system for low foam applications such as machine dishwashing wherein said surfactants include fatty alcohol polyalkylene glycol ethers wherein the alkylene unit consist of propylene groups (abstract; see formula III, col. 4, lines 15-25 and col. 5, line 5-col. 6, line 9).

Art Unit: 1751

It would have been obvious to one of ordinary skill in the art to include the specific polyglycol ethers of Lewis to the compositions of JP '382 because each reference is specific to auto dishwashing and Lewis teaches that said nonionic polyglycol ethers maintain low foam and defaming performance needed for automatic dishwashing and significantly reduces cost of other surfactants which form the major functional component(s) of the products used in these applications (col.4, lines 47-53).

Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

7. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Kwetkat et al (6,156,721).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of an additional nonionic surfactants hydroxyl mixed ether and/or N-alkyl glucamides.

Kwetkat et al disclose a cleansing composition useful for automatic dishwashing machines comprising 0.1 to 70% by weight of surfactant such as hydroxyl mixed ethers and N-methyl alkylglucamides (col. 9, lines 1-5; and col. 10, line 1-3).

It would have been obvious to one of ordinary skill in the dishwashing art to include the mixed ethers and alkylglucamides because both prior art references teach the use of surfactants for automatic dishwashing. Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the

Art Unit: 1751

same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.” In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

1. Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hees et al (5,753,606) in view of Haerer et al (5,759,987).

Hees et al disclose a low foaming cleaning composition for hard surfaces comprising 0.1 to 50% by weight of an alkyl polyglycoside (col. 2, lines 13-27); fatty acid alkyl ester alkoxyates of formula (II) (col. 2, line 59-col. 3, line 24); and additional surfactants such as nonionic alkyl polyglycol ethers, fatty acid polyglycol ethers and mixtures thereof (col. 3, lines 47-55) and further an auxiliary agent such as citric acid, polyacrylates and butylenes glycol (col. 4, lines 10-21). Note, see example 11.

Hees et al disclose all of the instantly required except applicant's additional N-alkyl glucamide nonionic surfactant.

Haerer et al disclose a hard surface cleaning composition comprising mixed ethers, glycol ethers and further nonionic surfactants such as alkyl polyglycoside and/or fatty acid N-alkyl glucamide surfactants (col. 2, line 5-col. 3, line 5).

It would have been obvious to one of ordinary skill in the art to include the N-alkyl glucamide type nonionic surfactant of Haerer et al to the compositions of Hees et al because Hees et al invite the inclusion of nonionic surfactants such as alkyl polyglycosides and Haerer et al suggest the alkyl polyglycosides and N-alkyl glucamides are functional equivalent nonionic surfactants for hard surface cleaning compositions

Art Unit: 1751

and an additional nonionic surfactant such as N-alkyl glucamides would aid at reducing the foaming as required by the teaching of Hees et al. Therefore, absent a showing to the contrary, one of ordinary skill in the art would expect synergistic and/or beneficial results by including a N-alkyl glucamide nonionic surfactant in the compositions of Hees et al.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 31-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8; 1-12; 1-11 and 25; and 1-14 of U.S. Patent No. 6602838; 6384009; 6683035; and 6660706; respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in subject matter pertaining to alkoxylated carboxylic acid esters

Art Unit: 1751


with hydroxyl mixed ethers or alkyl polyglycoside or polyglycol ethers or N-alkylglucamides.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Necholus Ogden  
Primary Examiner  
Art Unit 1751

No  
4-29-06